

**102-Doc. 9, R-54**

IN THE SUPERIOR COURT FOR THE COUNTY OF DAWSON  
STATE OF GEORGIA

STATE OF GEORGIA, )  
vs. ) FILE NO. 91-CR-300C  
TOMMY LEE WALDRIP, )  
Defendant. )

-----  
JURY TRIAL

HON. JOHN E. GIRARDEAU

OCTOBER 13, 1994

-----  
APPEARANCES OF COUNSEL:

ORIGINAL

On Behalf of the State:

LYDIA J. SARTAIN, District Attorney  
LEE DARRAGH  
LEONARD C. PARKS, JR.  
Assistant District Attorneys  
Gainesville, Georgia

On Behalf of the Defendant:

J. RICHARDSON BRANNON, III  
ANNE WATSON  
DONALD PULLIAM  
Attorneys at Law  
Gainesville, Georgia

-----  
VOLUME IX

GEORGIA, DAWSON COUNTY  
CLERK'S OFFICE, SUPERIOR COURT  
FILED FOR RECORD

at 8:35 A.M. 12-9-94  
Recorded by Book Page  
This day of 19

1674

Jack, McCord  
CLERK

1 incarcerated, his mind has been going a little nuts, he  
2 has been hearing voices, he has heard voices of people  
3 he can identify, jailers, prosecutors, newscasters. He  
4 has described a system of monitoring which he has felt  
5 has been going into his brain without his permission,  
6 and it rose to the level that Mr. Brannon and I were  
7 quite concerned, in that we could not talk to him any  
8 further without his fear of being overheard and  
9 monitored.

10 That is when Dr. Currie, a clinical  
11 psychologist from Atlanta, came into play and he  
12 examined Mr. Waldrip. The results of his examination,  
13 and he will testify to you, are that Mr. Waldrip is a  
14 man of borderline, below average intelligence. He has  
15 also exhibited episodes of psychotic behavior, and one  
16 other feature that he has found through his testing --

17 MR. DARRAGH: Excuse me, Ms. Watson, Your  
18 Honor, may we approach at the bench?

19 (Recorded bench conference).

20 THE COURT: How is this going to be used in  
21 the trial?

22 MS. WATSON: There are reasons, I told you  
23 what our defense was, there are reasons for the  
24 different statements.

25 THE COURT: Is Dr. Currie going to testify

1                   THE COURT: The evidence you shall give to  
2 the Court and to the jury in the trial of this issue  
3 between the State of Georgia and Tommy Lee Waldrip, who  
4 is charged with murder and other crimes set forth in  
5 Indictment Number 91-CR-300C shall be the truth, the  
6 whole truth and nothing but the truth?

7                   THE WITNESS: I do.

8                   THE COURT: Very well.

9                   RUSS McCLELLAN,

10                  after being first duly sworn, testified as follows:

11                  DIRECT EXAMINATION

12                  BY MR. DARRAGH:

13                  Q         Sir, would you state your full name and  
14 present occupation, please?

15                  A         My name is Russ McClellan, I'm presently an  
16 attorney in private practice.

17                  Q         And how long have you been in private  
18 practice now?

19                  A         Since November, 1992.

20                  Q         And where do you practice, sir?

21                  A         I have an office in Cumming and I also have  
22 an office in Roswell.

23                  Q         Prior to your present employment, what was  
24 your immediately preceding employment?

25                  A         I was the chief assistant district attorney

1 for the Blue Ridge Judicial Circuit.

2 Q What counties does that --

3 A Forsyth and Cherokee.

4 Q Okay. How long did you hold that position?

5 A I was chief assistant for about three or  
6 four years, I guess, and prior to that I was an  
7 assistant district attorney. I was, I began my  
8 employment there in November, 1984.

9 Q All right, sir. Would you briefly describe  
10 for, though I suppose we will get into some evidence of  
11 that here, would you briefly describe for the jury what  
12 your duties were as chief assistant district attorney  
13 and assistant district attorney?

14 A I was a trial assistant district attorney, I  
15 prepared indictments, investigated cases, coordinated  
16 law enforcement, interviewed witnesses and actually  
17 tried cases in my two-county circuit.

18 Q In the context of those duties, sir, can you  
19 testify as to whether or not you had any involvement  
20 with any trials against one named John Mark Waldrip?

21 A Yes, I did.

22 Q Do you know how John Mark Waldrip is  
23 related, if he is, to the defendant Tommy Lee Waldrip?

24 A John is his son.

25 Q All right, sir. Do you recall what John

1 Q All right, sir. I'm going to show you that  
2 which I have shown counsel, which is marked State's  
3 Exhibit 106. Can you tell me whether you can identify  
4 that particular document?

5 A Yes.

6 Q And what is that particular document?

7 A It appears to be the testimony of Keith  
8 Evans in that trial.

9 Q All right, sir.

10 MR. DARRAGH: Your Honor, I'm going to  
11 tender State's Exhibit 106 and ask that I be allowed  
12 to --

13 BY MR. DARRAGH:

14 Q First of all, were you the attorney asking  
15 the questions of Keith Evans in that trial?

16 A Yes, I was.

17 MR. DARRAGH: That I be asked to be Russ  
18 McClellan as far as reading questions and that Mr.  
19 McClellan be able to testify further about the answers  
20 of Keith Lloyd Evans in that particular trial, and I do  
21 tender 106 for that purpose.

22 MR. BRANNON: Your Honor, we would oppose  
23 introduction of 106 for this reason. We haven't been  
24 provided, at least to our knowledge, with a copy of that  
25 document and have not had occasion to read it. I think

1 the witness can refresh his memory and testify to what  
2 he did at that particular proceeding, but other than  
3 that, I think it wouldn't be admissible and we object to  
4 it on those grounds.

5 MR. DARRAGH: Your Honor, it would be  
6 admissible for several reasons. It goes to the  
7 motivation of what happened in the death of Keith Lloyd  
8 Evans, what the testimony was and the import of that  
9 testimony and why it was that Keith Evans was killed and  
10 the extent to which that testimony was offered and what  
11 impact it had, therefore it would be admissible for  
12 those reasons.

13 Further, Keith Lloyd Evans is unavailable,  
14 he cannot, of course, be here to testify, and I can lay  
15 a further foundation as to the certification of that  
16 particular document, but I ask that we be able to  
17 proceed in that fashion. I'm not tendering it for the  
18 purpose of going out with the jury, but to have his  
19 testimony read here in court and then make it a part of  
20 the record.

21 THE COURT: May I see the exhibit?

22 MR. DARRAGH: Further, it is directly  
23 relevant to the testimony being offered by the witness.

24 THE COURT: Okay.

25 MR. BRANNON: Before the Court makes a

1 ruling, let me also add to it that the link has already  
2 been established through this witness of the John Mark  
3 Waldrip trial, in that case, so I -- and Mr. Evans was a  
4 witness, I will object to the relevance of the entire  
5 transcript, whatever the testimony was at that trial, I  
6 don't think it is relevant to the issues in this trial  
7 and so I object on those grounds also.

8 THE COURT: Your intent, Mr. Darragh, is to  
9 go through the entire testimony, the question and  
10 answer?

11 MR. DARRAGH: Yes, sir, for the particular  
12 purpose of showing the import of that testimony and why,  
13 Your Honor, it was important to influence this witness,  
14 in the case of John Mark, Tommy Lee and Howard  
15 Livingston.

16 THE COURT: The objection is overruled. You  
17 may proceed as you have indicated you are, the statement  
18 will be attached to the record but will not, or the  
19 testimony will be attached to the record but will not go  
20 out with the jury as an evidentiary exhibit.

21 MR. DARRAGH: Your Honor, my additional copy  
22 is on its way, until it gets here, I will approach the  
23 witness, if I may.

24 BY MR. DARRAGH:

25 Q I will be you, Mr. McClellan.

1 A Okay.

2 Q And ask the questions, if you will give the  
3 answer that Keith Evans gave.

4 (Whereupon, the afore-mentioned testimony  
5 was read).

6 BY MR. DARRAGH:

7 Q "Tell us your name and age to start with,  
8 Keith?

9 A Keith Evans, 23.

10 Q And where are you living now?

11 A Decatur, Georgia.

12 Q How long have you lived there?

13 A Approximately five months.

14 Q Okay. And where did you live prior to that?

15 A Dawsonville, Georgia.

16 Q All right, are you working now?

17 A Yes.

18 Q Where are you working?

19 A Kroger Company.

20 Q And what is your position with Kroger?

21 A Customer service.

22 Q Could you tell us what that involves, just a  
23 little bit, please?

24 A Assisting the customers and assisting the  
25 front end people.

1 Q Okay. Prior to working for Kroger, where  
2 did you work?

3 A Foodcenter.

4 Q And where is that located?

5 A Highway 9.

6 Q Here in Forsyth County?

7 A Yes.

8 Q How long had you worked there?

9 A Approximately four and a half years.

10 Q All right, how did you start out with  
11 Foodcenter?

12 A Cashier.

13 Q Did you move up from cashier to some other  
14 position?

15 A Yes, I did.

16 Q What position did you move up to?

17 A Well, when I left, my position was closing  
18 manager.

19 Q All right. And tell me what that involves.

20 A I was responsible for the store, running the  
21 store.

22 Q Okay. By closing manager, does that refer  
23 to the shift that you worked, or what does that refer  
24 to?

25 A Yes, worked almost all nights.

1 Q Okay. How long, what were the hours of the  
2 store in the evenings?

3 A We closed at 10:00.

4 Q Okay. And were you open seven days a week?

5 A Yes.

6 Q Okay. Could you describe for me a little  
7 bit what exactly you would do on a routine shift, what  
8 your responsibilities were?

9 A Making sure the store was running properly,  
10 I worked in the office most of the time, counting tills  
11 and cashing checks.

12 Q Okay.

13 A Customer service.

14 Q If anybody that cashed a check, would they  
15 have to come through you?

16 A Most of the time, yes.

17 Q What were the exceptions when they wouldn't  
18 have to come through you?

19 A A cashier could have me approve a check and  
20 she could cash the check.

21 Q So the cashier would still have to come to  
22 you?

23 A Yes, most of the time."

24 MR. DARRAGH: I'm on page five, Counselor.

25 MR. BRANNON: Thank you.

1 MR. DARRAGH: At line 20, 21.

2 BY MR. DARRAGH:

3 Q "And you say you counted the money during  
4 the shift an put it in the safe, things like that?

5 A Yes.

6 Q And when you were working at Foodcenter,  
7 where were you living?

8 A In Dawsonville.

9 Q How long had you lived in Dawsonville?

10 A 23 years.

11 Q Now let me refer you back to the 27th of  
12 December of last year. Were you working on that  
13 evening?

14 A Yes.

15 Q What shift were you working?

16 A The evening shift.

17 Q What time did you come in to work on that  
18 day?

19 A 2:00 o'clock.

20 Q Is that the normal time you would go to  
21 work?

22 A Yes.

23 Q And did anything happen, did anything happen  
24 while you were on that particular shift that --

25 A Yes, that evening, say 7:00, real close to

1 7:00, I was robbed.

2 Q Okay. Would you tell me about how that  
3 happened, how that came about?

4 A I had left the courtesy counter and one of  
5 my cashiers said that there was someone waiting at the  
6 window for customer service, so I went back to the  
7 courtesy counter to wait on the customer.

8 Q Uh-huh.

9 A And once I got inside the courtesy counter,  
10 I was, the person I was waiting on threw a bag to me.

11 Q Uh-huh.

12 A And told me to fill the bag, he had a gun  
13 like inside his pants and he had on a jacket and pulled  
14 his jacket back and showed me the gun.

15 Q Okay.

16 A So --

17 Q What did you do after that?

18 A I went to the safe and I opened the safe and  
19 I filled the bag.

20 Q And where was he while you were doing this?

21 A He was still standing at the window.

22 Q And where were his hands, could you tell  
23 where his hands were?

24 A I don't recall.

25 Q Do you recall what he was wearing at all?

1 A He had on a brown jacket and jeans.

2 Q And how much of the gun were you able to  
3 see?

4 A Just the handle of the gun.

5 Q Okay, where was the gun on his, where did he  
6 have the gun?

7 A It was like to his side, like sticking in  
8 his pants.

9 Q Okay. On what side of his body?

10 A On his left side.

11 Q Okay. Now, did he come, if you could maybe  
12 step down to the chalkboard here, I don't know how good  
13 you are at drawing, just do like a floor plan of the  
14 front of the store and show me where the registers are  
15 and where the courtesy counter is.

16 A The register is right here, seven registers.

17 Q Okay.

18 A The courtesy counter is here and the window  
19 is right here.

20 Q And where is the door that you would go in  
21 and out of?

22 A It was right here.

23 Q Okay.

24 A And the safe was right here, there was a  
25 desk here.

1 Q Okay. When you first saw the person, where  
2 was he?

3 A He was standing at the window right here.

4 Q Okay. And where did you go at that point?

5 A Well, I went in beside the counter and came  
6 around to the window to see what the customer needed and  
7 you know, like I say, threw the bag through the window.

8 Q How big of an opening is the window?

9 A Like --"

10 MR. DARRAGH: I'm sorry.

11 Q "How big of an opening is the window? Like  
12 a standard money type window?

13 A Standard money window.

14 Q Okay. Does it have a depression underneath  
15 it?

16 A No.

17 Q It's just --

18 A A flat surface.

19 Q Okay. You can go back to your seat now.

20 And the person that you saw that night, had you seen  
21 that person before?

22 A Yes, I have.

23 Q How many times would you, would you say you  
24 have seen that person?

25 A Five or more.

1 Q Where have you seen him?

2 A As a customer in the store.

3 Q Okay. And what was your contact with him as  
4 a customer?

5 A Just like I recall cashing his check and I  
6 saw him like in the store purchasing things.

7 Q Okay. Did you ever know him by name?

8 A No.

9 Q Do you see that person in the courtroom  
10 today?

11 A Yes, I do.

12 Q Would you point him out, please?

13 A Yes. He's the gentleman right here.

14 Q Okay. Would you describe what he is wearing  
15 for the record?

16 A He has on a brown suit and a white shirt.

17 Q Let the record reflect he is identifying the  
18 defendant."

19 MR. DARRAGH: Your Honor, if I may pause  
20 here at this moment and ask Mr. McClellan a question  
21 before we continue.

22 THE COURT: Very well.

23 BY MR. DARRAGH:

24 Q Sir, you were in the courtroom at that time?

25 A Yes.

1 Q Asking the questions, is that correct?

2 A That's correct.

3 Q Did you see who it was that Keith Lloyd  
4 Evans pointed out that you identified as the defendant?

5 A Yes, the defendant was John Mark Waldrip and  
6 that is who we had on trial at that time.

7 Q And you previously testified he is the son  
8 of Tommy Lee Waldrip, the defendant here?

9 A Correct.

10 MR. DARRAGH: Continue.

11 Q "Is there any doubt or any question in your  
12 mind about who the person was that night?

13 A No.

14 Q Now, after he told you to fill up the bag,  
15 tell me exactly what he did while you were filling up  
16 the bag.

17 A I didn't look up at him when I filled the  
18 bag. I filled the bag and the only things he said to me  
19 when I was filling the bag was, "easy," so --

20 Q At what time did the store have any --"

21 MR. DARRAGH: Excuse me.

22 Q "At that time did the store have any alarms  
23 or anything like that?

24 A No, it didn't.

25 Q Did he ever make any statements to you about

1 your hands or about an alarm or anything like that?

2 A No. Like I said, he said, "easy," you know,  
3 like everything I did, you know, I assumed he was  
4 watching my hands.

5 Q Okay. What is the angle of your view when  
6 you are standing back here, is this a raised area?

7 A Yes, it's raised.

8 Q Would your eye level be about his eye level  
9 or below or at the same height?

10 A It is just, it's a little bit above.

11 Q Okay. You said that he had the gun in the  
12 left side of his pants?

13 A Right.

14 Q And showed his jacket like this?

15 A Uh-huh.

16 Q Could anybody else that was working in the  
17 cash area have seen that from the way he was standing?

18 A No.

19 Q How far is it from the window to the safe,  
20 how far did you have to go to get to the safe?

21 A It's about three or four feet.

22 Q Okay. And where is the safe as far as the  
23 level, in other words, would you be able to stand and go  
24 in the safe, or did you have to bend down?

25 A Either way, it was at the level you could

1 reach, either way.

2 Q Okay. From where the safe was and where he  
3 was, was he able, was his line of vision, did it include  
4 the inside of the safe?

5 A Yes, he could see inside the safe.

6 Q Okay. At what point did he tell you to  
7 stop, or did he tell you to stop, as far as getting the  
8 money out and putting it in the bag?

9 A Well, the money was laid out like laying  
10 this way.

11 Q Uh-huh.

12 A And there was, there was like one more pack  
13 of --

14 Q If you want to use your hand, the jury can't  
15 see your hand. The money was laying like this,  
16 indicating --

17 Q Okay.

18 A Like this, this was the safe, the money was  
19 laying this way. I had picked up each stack of the  
20 money, there was one stack left, and I don't know, maybe  
21 he couldn't see my hand exactly where they were going  
22 and he said, "stop, that's enough."

23 Q What denominations did you have in the safe  
24 and what denominations did you put into the bag?

25 A It was bundles of ones, fives, and tens.

1 Q Okay. And was that how you normally bundled  
2 the money?

3 A Yes.

4 Q And what quantity, I guess, bills do you  
5 bundle together as a general rule?

6 A Ones are bundled in fifties, and we bundle  
7 packs of fifties in stacks of 500 and then ones bundled  
8 in one hundreds, two fifties and five hundreds.

9 Q Okay. And tens?

10 A And tens are bundled in 250 or 500.

11 Q Okay. And so the pack is a series of  
12 bundles or a number of bundles, so there are 500 --"

13 MR. DARRAGH: Excuse me.

14 Q "500 one dollar bills would have been  
15 bundled together?

16 A Right.

17 Q Did you put any of those bundles in the bag?

18 A Yes, I did.

19 Q Do you remember how many, roughly?

20 A There was approximately two or three packs  
21 of ones.

22 Q Okay.

23 A And about --"

24 THE WITNESS: I think that is part of my  
25 question.

1 Q "How about the next denomination up, five,  
2 you said they were bundled in five hundreds or two  
3 fifties?

4 A Yes, there were various amounts of fives and  
5 tens, I couldn't be exact.

6 Q Okay. Do those get packed together in any  
7 other denominations, or are they just --

8 A They are just left.

9 Q Okay. And what was the one that was  
10 closest, ones up this way, or were they just stuck in  
11 there at random?

12 A Just random.

13 Q Okay, what happened after he told you to  
14 stop?

15 A I handed him the bag and he ran out of the  
16 store.

17 Q Okay. Where, could you step down here and  
18 show me where the doors are to the store?

19 A Okay. The big double door here, which is  
20 usually always open.

21 Q Uh-huh.

22 A And there is double doors here, double doors  
23 here and he ran out this door right here.

24 Q I guess I was a little bit confused, I was  
25 drawing this as the front of the store, I guess this is

1 the back of the store, is that right?

2 A Yes.

3 Q So this is where all the merchandize is?

4 A Yes, uh-huh.

5 Q This is the front?

6 A Yes.

7 Q So if you walk in the front door, the  
8 courtesy counter is to your left, or to your right?

9 A Yes.

10 Q Which way?

11 A Well, if you come in the store, it would be  
12 to your left.

13 Q Okay. He went out the door across from, I  
14 guess diagonally across the store?

15 A Right.

16 Q What did you do after he left?

17 A Once I saw he was out of sight I picked up  
18 the phone and called the police.

19 Q And did he make any other statement while he  
20 was there, other than what you have testified?

21 A No.

22 Q Did he tell you anything about calling the  
23 police before he left?

24 A No, I don't recall him saying anything about  
25 that.

1 Q Did you have any particular reason for  
2 waiting until he was out of sight?

3 A I just, I wanted to make sure he was gone  
4 because I didn't want him to turn around and see me on  
5 the phone.

6 Q Okay. And how long did it take the police  
7 to arrive?

8 A I would say three to five minutes.

9 Q And did you make any statements to the  
10 police or give any kind of description of the person  
11 that you saw?

12 A Yes, the next morning I went and did a  
13 composite drawing of him.

14 Q Let me ask, in looking at the defendant  
15 today, is there any marked difference in his appearance  
16 today as far as his facial hair or length of his hair or  
17 any other features you observed. His hair is a little  
18 bit shorter and he had a mustache at the time.

19 Q Now, where did you say you were when you  
20 first were drawn to his attention, somebody first drew  
21 you to his attention?

22 A I was back at the frozen food cases.

23 Q Where are they in relation to the courtesy  
24 counter?

25 A To the front?

1 Q Or to the front, yes.  
2 A It was like three and a half aisles away.  
3 Q Okay, in what direction?  
4 A It would be, if you were facing the courtesy  
5 counter, it would be to your right.  
6 Q Back this way?  
7 A Yes.  
8 Q Okay, so the store goes back this way some  
9 more?  
10 A Yes.  
11 Q Let me get the right lines in there and who  
12 was it that drew your attention to him?  
13 A It was the cashier, Becky Jennings.  
14 Q Did you go immediately to the counter?  
15 A Yes.  
16 Q Where he was waiting?  
17 A Uh-huh.  
18 Q And how would you have gotten to the counter  
19 from where you were?  
20 A I had to walk by the courtesy counter and go  
21 around and go in.  
22 Q So, you had walked behind him?  
23 A Yes.  
24 Q Okay. And did you notice anything unusual  
25 about him as you walked about?

1           A        No, he was facing inside the courtesy  
2 counter, I think.

3           Q        And what was the first thing that happened  
4 that you knew that something was wrong, something bad  
5 was about to happen?

6           A        Well, once I got in there and he threw me  
7 the bag, now I knew I was being robbed.

8           Q        Okay, what exactly did he say when he threw  
9 you the bag?

10          A        He said, "fill the bag."

11          Q        At what point did he show the gun?

12          A        After he said fill the bag.

13          Q        Did anybody else come over to see what you  
14 all were doing?

15          A        No.

16          Q        Is there a glass or anywhere besides right  
17 there at that window?

18          A        Yes, the upper part of the courtesy counter  
19 is glass.

20          Q        And where was the nearest cashier, let me  
21 ask you that?

22          A        She was on register five.

23          Q        And what is the sequence that they go, start  
24 at one and go away from the counter?

25          A        Yes.

1 Q So, how far would she have been from the  
2 counter?

3 A She was about, I would say 30 feet.

4 Q I believe you testified somebody coming to  
5 the counter to get a check cashed or for some other  
6 customer service, is that an unusual thing at that time  
7 of the evenings?

8 A No.

9 Q Was there anything about that that would  
10 have drawn anyone's attention to you or to him?

11 A No.

12 Q How long was he there, how long was the  
13 defendant there in contact with you at the counter?

14 A About five minutes.

15 Q Now, at some later time were you called upon  
16 to look at some pictures?

17 A Yes.

18 Q When was that?

19 A Numerous times.

20 Q Okay. When was the first time you were  
21 asked to look at some pictures, was it the next day, or  
22 weeks, or so, months?

23 A It was weeks, maybe.

24 Q Where were you when you were asked to do  
25 that?

1           A       The first time I looked at pictures, I was  
2 at the police department.

3           Q       Okay, what kind of pictures did you look at  
4 there?

5           A       They were, it was a card like containing  
6 photographs of different people.

7           Q       Okay. Do you recall which officers were  
8 there?

9           A       I don't remember which officer I talked to  
10 that day.

11          Q       Okay. Were you able to identify anybody out  
12 of that particular picture spread?

13          A       No.

14          Q       Okay. How about at a later time?

15          A       I saw, I would say there are four times I  
16 looked at pictures of people.

17          Q       Okay. Did you pick somebody out of any of  
18 those pictures? Did you pick the defendant out of any  
19 of those pictures?

20          A       No. It was the last ones I was shown, that  
21 I picked someone out.

22          Q       Do you remember when that was?

23          A       It was one day just as I had come in to  
24 work, an officer came up to the store and showed me some  
25 pictures.

1 Q Okay. Who was there with you when you took,  
2 when that took place, was anybody in the store there  
3 with you?

4 A Yes, there were other employees there, it  
5 was at shift change time.

6 Q Okay. And did you identify out of that, and  
7 who did you identify out of that picture spread?

8 A The man I identified today in the court  
9 room.

10 Q And do you recall exactly when that was,  
11 about how long after this incident?

12 A How long after, it was a few months after  
13 that.

14 Q Now let me show you what has been marked as  
15 State's Exhibit Number 1 and see if you can identify  
16 first of all just the whole exhibit, not any particular,  
17 but on the exhibit as a whole, the whole exhibit?

18 A Yes.

19 Q Okay. What is that?

20 A It's a photo, display folder.

21 Q Have you seen that folder before?

22 A Yes, I have.

23 Q When did you see that folder?

24 A This was the day I identified him.

25 Q Okay, and where were you, at the Foodcenter?

1 A Yes.

2 Q And which picture did you identify as the  
3 defendant?

4 A Number three.

5 Q And is the person pictured in number three  
6 the same person you identified today?

7 A Yes.

8 Q Mr. Evans, is there any question in your  
9 mind as to, is there any question in your mind at all as  
10 to the identification that you have made today and that  
11 you made on that card or that lineup that John Mark  
12 Waldrip is the person that came into your store and  
13 robbed you on the 27th?

14 A No.

15 Q Thank you, sir."

16 MR. DARRAGH: Your Honor, at this time the  
17 cross-examination proceeded. I would be glad to  
18 continue in the fashion that I am if counsel would also  
19 like the cross-examination.

20 MR. BRANNON: It will be fine if they  
21 proceed in the same manner, Your Honor.

22 MR. DARRAGH: I will proceed.

23 Cross-examination by Mr. Rusty Jackson, and I will be  
24 Mr. Jackson if you will continue to be Mr. Evans.

25 Q "Now, when the person that robbed you left

1 the store, did you get, did you see him get into any car  
2 or anything of that nature?

3 A No.

4 Q Any car whatsoever that could be termed a  
5 getaway car or whatever?

6 A No.

7 Q Now, from your description of the store area  
8 here, would it be fair to say that when you walked into  
9 the cashier's box, that was the first time, and turned  
10 toward the person at the window, that's the first time  
11 you were face to face with the person at the window, is  
12 that right?

13 A Yes.

14 Q And what you were thinking is that you were  
15 going to go up and cash someone's check, is that right?

16 A Very possibly.

17 Q Now, at, at what point did you first view  
18 the person that was standing at the window?

19 A Face to face, or just when I walked into the  
20 courtesy counter?

21 Q When you walked into the courtesy counter.

22 A Yes.

23 Q And then what is it, about five steps or so  
24 from the entry to the courtesy counter, to the window?

25 A Well, three.

1 Q Three steps?

2 A Uh-huh.

3 Q Okay. So you walked one, two, three steps  
4 and you were there, and the first thing that happened is  
5 a bag that is thrown on the --

6 A Once I got in the courtesy counter, yes,  
7 once I had stepped behind --

8 Q Was the bag thrown on the counter as soon as  
9 you stepped inside the courtesy counter?

10 A Once I approached the window, yes.

11 Q Okay. As you were approaching the window,  
12 the bag was thrown to the counter?

13 A Right.

14 Q And during those three steps you were  
15 taking, the bag comes down on the counter?

16 A I only took three steps to the counter,  
17 walked around like a corner like this.

18 Q Uh-huh.

19 A And I walked around the corner and was  
20 approaching the window when the bag was thrown in.

21 Q Okay. As you walked into the entrance to  
22 the courtesy counter and you looked down and you saw  
23 someone standing?

24 A Uh-huh.

25 Q At the window?

1 A Right.

2 Q And you turned the corner, walked three  
3 steps to the window, as you were walking down those  
4 three steps the bag was placed down?

5 A Right.

6 Q Okay. And would it be fair to say that once  
7 the bag was placed down, your attention was focused on  
8 the bag that had been placed down?

9 A Right.

10 Q Then when you got to the courtesy counter  
11 the person said fill the bag up and pulled his coat  
12 back?

13 A Right.

14 Q And you viewed the gun?

15 A Right.

16 Q All right. Let me talk a second about the  
17 gun. Is the jacket that you, the jacket that the person  
18 was wearing, was it, was it a sports jacket he was  
19 wearing, a suit coat like I am wearing?

20 A No.

21 Q Just a regular corduroy jacket, not a sports  
22 coat?

23 A It had more of like a leather look to it.

24 Q Was it cut similar to this, did it hang  
25 straight down?

1           A        It was a little shorter than that jacket  
2        that you have on.

3           Q        Okay. And the gun was not visible until the  
4        coat was pulled back, is that correct?

5           A        Correct.

6           Q        So as far as where the gun was on the  
7        person, on the left side, it had to be back in this area  
8        somewhere where the coat concealed it, is that right?

9           A        It was a little further to the front.

10          Q        A little further to the front, okay,  
11        somewhere right in front of the person's side?

12          A        Right.

13          Q        The front side of his body, would you say it  
14        was just in front of the person's side?

15          A        Yes.

16          Q        Just in front of the person's side and the  
17        front side of his body?

18          A        Right.

19          Q        Now, all you saw of the gun was that it was  
20        a brown handled revolver, is that right?

21          A        Right.

22          Q        Tell me exactly what you saw of the gun.

23          A        I saw the top of the gun.

24          Q        Oh, the top of the gun, the top of the gun  
25        meaning the handle that you hold it by?

1 A Right.

2 Q And it had a brown color?

3 A Yes.

4 Q Could you tell what kind of material it was  
5 that the handle was made out of?

6 A No.

7 Q You just saw the color brown?

8 A Right.

9 Q Could you see the barrel of the gun at all?  
10 A No.

11 Q You couldn't see, could you see the cylinder  
12 that the bullets went in at all?

13 A Like the very top of it.

14 Q Did you notice what color that was?

15 A It was a dark brown color.

16 Q The cylinder where the bullets go in was  
17 also a dark brown color?

18 A Yes.

19 Q When the person pulled their coat back to  
20 show you the gun, did they do it with their left hand?

21 A Yes.

22 Q Or right hand?

23 A Left hand.

24 Q Left hand. Now, I believe you said on  
25 questioning by Mr. McClellan that you think the entire

1 time that this event was going on was five minutes?

2 A Approximately.

3 Q Okay. Now, the safe that you were taking  
4 the money out of is in the same box?

5 A Right.

6 Q That you were in up there, is that correct?

7 A Correct.

8 Q It was on this side of the entry door to the  
9 box, on the window side, or on the other side?

10 A The first block I have drawn there.

11 Q The first block there?

12 A That's the safe.

13 Q Okay. So you didn't have to move really  
14 very far to get to the safe?

15 A No.

16 Q The safe, is it down on the floor?

17 A No, it's about level with you, you know.

18 Q You have to have a combination to get into  
19 the safe, I suppose, is that right?

20 A No, not necessarily.

21 Q Okay. So the safe was not necessarily  
22 locked?

23 A No.

24 Q And this particular type was not locked, so  
25 you just had to turn a handle and open it?

1 A Right.

2 Q Okay, so you just turned the handle, opened  
3 it and started putting money in the bag?

4 A Right.

5 Q And you said the bills were bundled in ones  
6 and fives and tens?

7 A Correct.

8 Q And how would such a bundle of, say, ones,  
9 how many ones would you put into a bundle to make a  
10 bundle?

11 A You bundle them in packs of 50 and then we  
12 bundled ten packs of 50 to make 500.

13 Q Okay. I'm talking about ones, you have got  
14 one big bundle and it has 500 ones in it?

15 A Right.

16 Q Okay. So you just have to reach in and take  
17 out one bundle, is that right?

18 A Right.

19 Q To get \$500, how about the tens, what size  
20 are they bundled in to?

21 A We bundle those into 250 and 500.

22 Q Okay. So, is what you got out of the safe  
23 basically, talking about \$3,000, talking about six  
24 bundles of \$500 each?

25 A Yes.

1 Q Okay. So, that's what you did basically,  
2 you took out six bundles or thereabouts?

3 A Yes.

4 Q And put it in the bag before you had to  
5 stop?

6 A Yes.

7 Q Okay. And then gave the bag back to the  
8 person who ran out of the store, I think you said?

9 A Yes.

10 Q Okay. Now, as you were putting the money in  
11 the bag, your attention was focused on the fact you  
12 were, what you were doing, taking the money out of the  
13 safe and putting it into the bags, is that correct?

14 A Correct.

15 Q You were not looking at the person standing  
16 at the window at that time, is that right?

17 A Right.

18 Q Now did you really have to move at all from  
19 the safe to place the bag back on the counter where the  
20 window is at or did you just kind of throw it up there?

21 A Just like a step or two.

22 Q A step, and did you place it up there or did  
23 you toss it up there?

24 A Placed it up there.

25 Q And then the person immediately grabbed the

1 bag and ran?

2 A Right.

3 Q Now that we have gone through the whole  
4 process of doing that, do you think it actually took as  
5 long as five minutes to go through all of that?

6 A It may have been less.

7 Q Now, you said that you saw these  
8 photographic lineups. You think you saw several of  
9 them?

10 A Yes.

11 Q And by several, do you mean you at least saw  
12 three or more?

13 A Yes.

14 Q And so the last one that has been identified  
15 that you picked someone out of?

16 A Yes.

17 Q Okay. Now, after you identified this  
18 photograph, were you ever asked in State's Exhibit  
19 Number 1 here, were you ever asked to go to the jail or  
20 anywhere else and view a group of people in an in-person  
21 lineup?

22 A Yes, but that was before I saw that  
23 particular --

24 Q That is what I'm asking you, after you saw  
25 this, were you ever asked to do that?

1 A No.

2 Q And would it be fair to say that all these  
3 pictures show basically the people depicted in them from  
4 just below the shoulders up?

5 A Yes.

6 Q And you said Mr. Waldrip had been to the  
7 Foodcenter before, is that correct?

8 A Yes.

9 Q And the business that you had had with him  
10 there in the past was cashing his paychecks, is that  
11 right?

12 A Yes.

13 Q That is one of the things that you do quite  
14 often, is cash a lot of people's paychecks, say people  
15 doing that particular thing, is that a fair statement?

16 A Yes.

17 Q Let me show you what I have marked as  
18 Defendant's Exhibit Number 1. Do you recognize that?

19 A Yes.

20 Q What is that?

21 A That's the composite that I did.

22 Q Okay. How did you go about doing this  
23 composite drawing?

24 A I used, I guess you could call slides, small  
25 slips of plastic, used the different ones.

1 Q They give you different looks on persons,  
2 different facial features?

3 A Yes.

4 Q Hairstyles?

5 A Yes.

6 Q Things of that nature?

7 A Yes.

8 Q By putting those together you come up with a  
9 description of the person you think you saw, is that  
10 right?

11 A Yes.

12 Q That is the composite you came up with. Is  
13 that correct?

14 A Yes.

15 Q I believe that's all the questions I have at  
16 this time." Mr. Jackson said, then Mr. McClellan said,  
17 "Just a few more questions." And then Mr. McClellan  
18 continued with redirect examination. And I will be you  
19 now.

20 Q "Now, when you, I believe you said earlier  
21 about the cashing of checks, where did you usually cash  
22 them, at the courtesy counter, where did you cash the  
23 checks that you cashed for the defendant on prior  
24 occasions, where were you when you cashed those checks?

25 A Courtesy counter.

1 Q Is it possible for someone standing at the  
2 courtesy counter to see the safe if you are standing  
3 there cashing their check?

4 A Yes.

5 Q Can they see the safe?

6 A Uh-huh, yes.

7 Q Can that person see the condition the safe  
8 is in, that is, that it is not normally closed or  
9 locked?

10 A If you looked at it the way the door, the  
11 door is usually closed, you would assume it's locked.

12 Q Okay. But you can plainly see that it's a  
13 safe, that it is a safe?

14 A Yes.

15 Q And did you say that you did not have to  
16 have a combination to open it?

17 A No.

18 Q How did you open this safe?

19 A You just lift the handle to open the door.

20 Q What kind of safe is it, has it got any  
21 combination?

22 A Yes, it does.

23 Q On the outside?

24 A Yes.

25 Q Does it have a handle?

1 A Yes.

2 Q And describe the handle to me again.

3 A It is just a lift handle, you lift it up on  
4 the door and you pull it and --

5 Q Is it like a lever?

6 A Yes.

7 Q Like a car door?

8 A No.

9 Q Now, have you ever cashed checks when you  
10 have had the safe open for some reason, or do you have  
11 to go to the safe to get the money to cash the checks?

12 A There has been times I went to the safe to  
13 get money.

14 Q Is there any other cash drawer in the  
15 courtesy counter area where you cash a check?

16 A Just the register itself.

17 Q Okay. Where is that located?

18 A It is beside the window, it's to the, if you  
19 are facing the counter, it would be to your right.

20 Q To your right, so if you are working, it  
21 would be to your left?

22 A Correct.

23 Q When did you first realize you had seen the  
24 defendant before that night, when did you first realize  
25 you had seen him?

1 A When? When I walked to the courtesy  
2 counter.

3 Q And did you tell anybody that was  
4 investigating this case that you had seen him before?

5 A Yes.

6 Q Who did you tell?

7 A I told all the officers that I talked to.

8 Q And when you, going back to this lineup here  
9 that you looked at, this photo display, all the  
10 photographs you have seen, did you select any other  
11 photographs other than the one that you showed me,  
12 number three on this exhibit?

13 A No, I did not.

14 Q As the person that was there that night? I  
15 believe you said you went to an in-person lineup on  
16 another --

17 A Yes, I did.

18 Q -- time, and was that before you were shown  
19 this particular --

20 A Yes.

21 Q -- this particular photo? Where was that  
22 conducted?

23 A At the jail.

24 Q And did you identify anybody out of that  
25 lineup?

1 A No.

2 Q Before that lineup and before you were shown  
3 any of these pictures, did the officers suggest anything  
4 to you as to whether someone was or was not in a  
5 particular lineup or photographs, as to who might be in  
6 there?

7 A They said they thought they had the person  
8 but, you know --

9 Q At which point was that?

10 A Well, there was one or two times they said  
11 they thought they had the person.

12 Q Was one of those times with this lineup?

13 A No.

14 Q Did that influence your decision in any way?

15 A No.

16 Q Their statement that they thought they had  
17 the person, now with regard to these pictures, was this  
18 how they were shown to you, just like this?

19 A Yes.

20 Q Were you ever shown pictures of any of these  
21 people individually before you were shown this?

22 A Not that I recall, no.

23 Q Okay. Did any officers suggest to you which  
24 pictures to select out of that lineup?

25 A No.

1 Q Have you had any occasion to see the  
2 defendant since the robbery, before court this week?

3 A Yes, I did.

4 Q Where did you see him?

5 A It was, I had come home one weekend, well,  
6 it was during the week.

7 Q Uh-huh.

8 A To visit my family and I was in a  
9 convenience store in Dawsonville and I saw him outside  
10 the convenience store.

11 Q That was in Dawsonville?

12 A Yes.

13 Q Your parents live in Dawsonville?

14 A Yes, correct.

15 Q And you were living up there at the time?

16 A I was visiting.

17 Q Visiting, okay. And that was when?

18 A I would say that was in June or July.

19 Q Of this year?

20 A Yes.

21 Q Or last year?

22 A Yes, this year.

23 Q And was that after you had identified this  
24 photograph?

25 A Yes.

1 Q Thank you.

2 A Uh-huh."

3 MR. DARRAGH: The Court said, "Anything  
4 further?" Mr. Jackson said, "No, sir." Mr. McClellan  
5 said, "No further questions." The Court asked him to  
6 step down.

7 Your Honor, that concludes the reading of  
8 that testimony of Keith Lloyd Evans at the initial trial  
9 of John Mark Waldrip.

10 BY MR. DARRAGH:

11 Q Sir, you were familiar with and were  
12 handling that case, is that correct?

13 THE COURT: Mr. Darragh, I think we will  
14 break at this point. We're going to take our noon  
15 recess. Ladies and gentlemen, we're going to use the  
16 clock inside the courtroom here as the official time, so  
17 if you would, just coordinate your watches with the  
18 clock that is here. Remember your precautionary  
19 instructions I gave you this morning. We will be in  
20 recess for one hour.

21 (Jury excused from the courtroom).

22 (Noon recess).

23

24

25

1 car and John was fixing to get in it and he hollered and  
2 we started talking, and he walked over, like we were  
3 pulling out of the drive, you know, moving and --

4 Q John walked over and talked to you at that  
5 point?

6 A Uh-huh.

7 Q All right. What car was Tommy in?

8 A It was Linda's car.

9 Q Okay. Let me show you some -- excuse me,  
10 this thing moves, I was going to lean on it, not a good  
11 idea.

12 Ma'am, let me show you some exhibits that  
13 are marked State's 21-P, 23-P and 28-P. Are you  
14 familiar with this particular vehicle?

15 A Yes.

16 Q And what vehicle is that?

17 A Linda's car.

18 Q Okay. Is that the car that you saw Tommy  
19 in?

20 A Yes.

21 Q Okay. Is that the car that you saw John  
22 Mark about to get in between 9:00 and 9:30 on that  
23 evening?

24 A Yes.

25 Q You had known John some time before this as

1 well, is that correct?

2 A Uh-huh.

3 Q Just a yes or no to this question at this  
4 time. You still from time to time talk to John Mark  
5 Waldrip on the telephone, is that correct?

6 A I did but I haven't talked to him probably  
7 in eight or ten months, you know, at least.

8 Q Okay. How frequently before then did you  
9 talk with him?

10 A I only talked to him a few times, I just  
11 happened to be there, you know, when he had called.

12 Q Okay. Be where when he would call?

13 A At Kim Odom's.

14 Q Okay. Was Kim also a resident of the  
15 Gravitt Apartments?

16 A Uh-huh.

17 Q And you would get on the phone with John and  
18 have conversation with him?

19 A Yes, how you doing.

20 Q Okay. Now, the event following that  
21 particular Saturday night, can you testify as to whether  
22 or not you observed Tommy Waldrip around the apartments  
23 prior to his being arrested?

24 A Uh-huh.

25 Q Did he come and talk to you?

1 A Right.

2 Q And you turned the corner, walked three  
3 steps to the window, as you were walking down those  
4 three steps the bag was placed down?

5 A Right.

6 Q Okay. And would it be fair to say that once  
7 the bag was placed down, your attention was focused on  
8 the bag that had been placed down?

9 A Right.

10 Q Then when you got to the courtesy counter  
11 the person said fill the bag up and pulled his coat  
12 back?

13 A Right.

14 Q And you viewed the gun?

15 A Right.

16 Q All right. Let me talk a second about the  
17 gun. Is the jacket that you, the jacket that the person  
18 was wearing, was it, was it a sports jacket he was  
19 wearing, a suit coat like I am wearing?

20 A No.

21 Q Just a regular corduroy jacket, not a sports  
22 coat?

23 A It had more of like a leather look to it.

24 Q Was it cut similar to this, did it hang  
25 straight down?

1       A       It was a little shorter than that jacket  
2       that you have on.

3       Q       Okay. And the gun was not visible until the  
4       coat was pulled back, is that correct?

5       A       Correct.

6       Q       So as far as where the gun was on the  
7       person, on the left side, it had to be back in this area  
8       somewhere where the coat concealed it, is that right?

9       A       It was a little further to the front.

10      Q       A little further to the front, okay,  
11      somewhere right in front of the person's side?

12      A       Right.

13      Q       The front side of his body, would you say it  
14      was just in front of the person's side?

15      A       Yes.

16      Q       Just in front of the person's side and the  
17      front side of his body?

18      A       Right.

19      Q       Now, all you saw of the gun was that it was  
20      a brown handled revolver, is that right?

21      A       Right.

22      Q       Tell me exactly what you saw of the gun.

23      A       I saw the top of the gun.

24      Q       Oh, the top of the gun, the top of the gun  
25      meaning the handle that you hold it by?

1 A Right.

2 Q And it had a brown color?

3 A Yes.

4 Q Could you tell what kind of material it was  
5 that the handle was made out of?

6 A No.

7 Q You just saw the color brown?

8 A Right.

9 Q Could you see the barrel of the gun at all?  
10 A No.

11 Q You couldn't see, could you see the cylinder  
12 that the bullets went in at all?

13 A Like the very top of it.

14 Q Did you notice what color that was?

15 A It was a dark brown color.

16 Q The cylinder where the bullets go in was  
17 also a dark brown color?

18 A Yes.

19 Q When the person pulled their coat back to  
20 show you the gun, did they do it with their left hand?

21 A Yes.

22 Q Or right hand?

23 A Left hand.

24 Q Left hand. Now, I believe you said on  
25 questioning by Mr. McClellan that you think the entire

1 time that this event was going on was five minutes?

2 A Approximately.

3 Q Okay. Now, the safe that you were taking  
4 the money out of is in the same box?

5 A Right.

6 Q That you were in up there, is that correct?

7 A Correct.

8 Q It was on this side of the entry door to the  
9 box, on the window side, or on the other side?

10 A The first block I have drawn there.

11 Q The first block there?

12 A That's the safe.

13 Q Okay. So you didn't have to move really  
14 very far to get to the safe?

15 A No.

16 Q The safe, is it down on the floor?

17 A No, it's about level with you, you know.

18 Q You have to have a combination to get into  
19 the safe, I suppose, is that right?

20 A No, not necessarily.

21 Q Okay. So the safe was not necessarily  
22 locked?

23 A No.

24 Q And this particular type was not locked, so  
25 you just had to turn a handle and open it?

1 A Right.

2 Q Okay, so you just turned the handle, opened  
3 it and started putting money in the bag?

4 A Right.

5 Q And you said the bills were bundled in ones  
6 and fives and tens?

7 A Correct.

8 Q And how would such a bundle of, say, ones,  
9 how many ones would you put into a bundle to make a  
10 bundle?

11 A You bundle them in packs of 50 and then we  
12 bundled ten packs of 50 to make 500.

13 Q Okay. I'm talking about ones, you have got  
14 one big bundle and it has 500 ones in it?

15 A Right.

16 Q Okay. So you just have to reach in and take  
17 out one bundle, is that right?

18 A Right.

19 Q To get \$500, how about the tens, what size  
20 are they bundled in to?

21 A We bundle those into 250 and 500.

22 Q Okay. So, is what you got out of the safe  
23 basically, talking about \$3,000, talking about six  
24 bundles of \$500 each?

25 A Yes.

1 Q Okay. So, that's what you did basically,  
2 you took out six bundles or thereabouts?

3 A Yes.

4 Q And put it in the bag before you had to  
5 stop?

6 A Yes.

7 Q Okay. And then gave the bag back to the  
8 person who ran out of the store, I think you said?

9 A Yes.

10 Q Okay. Now, as you were putting the money in  
11 the bag, your attention was focused on the fact you  
12 were, what you were doing, taking the money out of the  
13 safe and putting it into the bags, is that correct?

14 A Correct.

15 Q You were not looking at the person standing  
16 at the window at that time, is that right?

17 A Right.

18 Q Now did you really have to move at all from  
19 the safe to place the bag back on the counter where the  
20 window is at or did you just kind of throw it up there?

21 A Just like a step or two.

22 Q A step, and did you place it up there or did  
23 you toss it up there?

24 A Placed it up there.

25 Q And then the person immediately grabbed the

1 bag and ran?

2 A Right.

3 Q Now that we have gone through the whole  
4 process of doing that, do you think it actually took as  
5 long as five minutes to go through all of that?

6 A It may have been less.

7 Q Now, you said that you saw these  
8 photographic lineups. You think you saw several of  
9 them?

10 A Yes.

11 Q And by several, do you mean you at least saw  
12 three or more?

13 A Yes.

14 Q And so the last one that has been identified  
15 that you picked someone out of?

16 A Yes.

17 Q Okay. Now, after you identified this  
18 photograph, were you ever asked in State's Exhibit  
19 Number 1 here, were you ever asked to go to the jail or  
20 anywhere else and view a group of people in an in-person  
21 lineup?

22 A Yes, but that was before I saw that  
23 particular --

24 Q That is what I'm asking you, after you saw  
25 this, were you ever asked to do that?

1 A No.

2 Q And would it be fair to say that all these  
3 pictures show basically the people depicted in them from  
4 just below the shoulders up?

5 A Yes.

6 Q And you said Mr. Waldrip had been to the  
7 Foodcenter before, is that correct?

8 A Yes.

9 Q And the business that you had had with him  
10 there in the past was cashing his paychecks, is that  
11 right?

12 A Yes.

13 Q That is one of the things that you do quite  
14 often, is cash a lot of people's paychecks, say people  
15 doing that particular thing, is that a fair statement?

16 A Yes.

17 Q Let me show you what I have marked as  
18 Defendant's Exhibit Number 1. Do you recognize that?

19 A Yes.

20 Q What is that?

21 A That's the composite that I did.

22 Q Okay. How did you go about doing this  
23 composite drawing?

24 A I used, I guess you could call slides, small  
25 slips of plastic, used the different ones.

1 Q They give you different looks on persons,  
2 different facial features?

3 A Yes.

4 Q Hairstyles?

5 A Yes.

6 Q Things of that nature?

7 A Yes.

8 Q By putting those together you come up with a  
9 description of the person you think you saw, is that  
10 right?

11 A Yes.

12 Q That is the composite you came up with. Is  
13 that correct?

14 A Yes.

15 Q I believe that's all the questions I have at  
16 this time." Mr. Jackson said, then Mr. McClellan said,  
17 "Just a few more questions." And then Mr. McClellan  
18 continued with redirect examination. And I will be you  
19 now.

20 Q "Now, when you, I believe you said earlier  
21 about the cashing of checks, where did you usually cash  
22 them, at the courtesy counter, where did you cash the  
23 checks that you cashed for the defendant on prior  
24 occasions, where were you when you cashed those checks?

25 A Courtesy counter.

1 Q Is it possible for someone standing at the  
2 courtesy counter to see the safe if you are standing  
3 there cashing their check?

4 A Yes.

5 Q Can they see the safe?

6 A Uh-huh, yes.

7 Q Can that person see the condition the safe  
8 is in, that is, that it is not normally closed or  
9 locked?

10 A If you looked at it the way the door, the  
11 door is usually closed, you would assume it's locked.

12 Q Okay. But you can plainly see that it's a  
13 safe, that it is a safe?

14 A Yes.

15 Q And did you say that you did not have to  
16 have a combination to open it?

17 A No.

18 Q How did you open this safe?

19 A You just lift the handle to open the door.

20 Q What kind of safe is it, has it got any  
21 combination?

22 A Yes, it does.

23 Q On the outside?

24 A Yes.

25 Q Does it have a handle?

1 A Yes.

2 Q And describe the handle to me again.

3 A It is just a lift handle, you lift it up on  
4 the door and you pull it and --

5 Q Is it like a lever?

6 A Yes.

7 Q Like a car door?

8 A No.

9 Q Now, have you ever cashed checks when you  
10 have had the safe open for some reason, or do you have  
11 to go to the safe to get the money to cash the checks?

12 A There has been times I went to the safe to  
13 get money.

14 Q Is there any other cash drawer in the  
15 courtesy counter area where you cash a check?

16 A Just the register itself.

17 Q Okay. Where is that located?

18 A It is beside the window, it's to the, if you  
19 are facing the counter, it would be to your right.

20 Q To your right, so if you are working, it  
21 would be to your left?

22 A Correct.

23 Q When did you first realize you had seen the  
24 defendant before that night, when did you first realize  
25 you had seen him?

1 A When? When I walked to the courtesy  
2 counter.

3 Q And did you tell anybody that was  
4 investigating this case that you had seen him before?

5 A Yes.

6 Q Who did you tell?

7 A I told all the officers that I talked to.

8 Q And when you, going back to this lineup here  
9 that you looked at, this photo display, all the  
10 photographs you have seen, did you select any other  
11 photographs other than the one that you showed me,  
12 number three on this exhibit?

13 A No, I did not.

14 Q As the person that was there that night? I  
15 believe you said you went to an in-person lineup on  
16 another --

17 A Yes, I did.

18 Q -- time, and was that before you were shown  
19 this particular --

20 A Yes.

21 Q -- this particular photo? Where was that  
22 conducted?

23 A At the jail.

24 Q And did you identify anybody out of that  
25 lineup?

1 A No.

2 Q Before that lineup and before you were shown  
3 any of these pictures, did the officers suggest anything  
4 to you as to whether someone was or was not in a  
5 particular lineup or photographs, as to who might be in  
6 there?

7 A They said they thought they had the person  
8 but, you know --

9 Q At which point was that?

10 A Well, there was one or two times they said  
11 they thought they had the person.

12 Q Was one of those times with this lineup?

13 A No.

14 Q Did that influence your decision in any way?

15 A No.

16 Q Their statement that they thought they had  
17 the person, now with regard to these pictures, was this  
18 how they were shown to you, just like this?

19 A Yes.

20 Q Were you ever shown pictures of any of these  
21 people individually before you were shown this?

22 A Not that I recall, no.

23 Q Okay. Did any officers suggest to you which  
24 pictures to select out of that lineup?

25 A No.

1 Q Have you had any occasion to see the  
2 defendant since the robbery, before court this week?

3 A Yes, I did.

4 Q Where did you see him?

5 A It was, I had come home one weekend, well,  
6 it was during the week.

7 Q Uh-huh.

8 A To visit my family and I was in a  
9 convenience store in Dawsonville and I saw him outside  
10 the convenience store.

11 Q That was in Dawsonville?

12 A Yes.

13 Q Your parents live in Dawsonville?

14 A Yes, correct.

15 Q And you were living up there at the time?

16 A I was visiting.

17 Q Visiting, okay. And that was when?

18 A I would say that was in June or July.

19 Q Of this year?

20 A Yes.

21 Q Or last year?

22 A Yes, this year.

23 Q And was that after you had identified this  
24 photograph?

25 A Yes.

1 Q Thank you.

2 A Uh-huh."

3 MR. DARRAGH: The Court said, "Anything  
4 further?" Mr. Jackson said, "No, sir." Mr. McClellan  
5 said, "No further questions." The Court asked him to  
6 step down.

7 Your Honor, that concludes the reading of  
8 that testimony of Keith Lloyd Evans at the initial trial  
9 of John Mark Waldrip.

10 BY MR. DARRAGH:

11 Q Sir, you were familiar with and were  
12 handling that case, is that correct?

13 THE COURT: Mr. Darragh, I think we will  
14 break at this point. We're going to take our noon  
15 recess. Ladies and gentlemen, we're going to use the  
16 clock inside the courtroom here as the official time, so  
17 if you would, just coordinate your watches with the  
18 clock that is here. Remember your precautionary  
19 instructions I gave you this morning. We will be in  
20 recess for one hour.

21 (Jury excused from the courtroom).

22 (Noon recess).

23

24

25

1 Waldrip.

2 Q All right, sir. Before we proceed with some  
3 more documentation, can I ask you, please, do you have a  
4 personal recall as to what Keith Evans' attitude was,  
5 demeanor was in reference to coming to court or in  
6 reference to any court actions prior to the first trial?

7 A He was very cooperative. He had no trouble,  
8 as I recall, we had no trouble getting him to appear  
9 when we needed him and that sort of things.

10 Q Prior to the first trial did you notice in  
11 him from your personal observations any apprehension  
12 prior to the first trial?

13 A None more than any, you know, witness in a  
14 similar case would have about testifying at all and  
15 about testifying in an armed robbery case where they  
16 were the victim.

17 Q As to the second time that the matter was to  
18 come up for trial on April 15th, 1991, did you make any  
19 personal observations or could you make any personal  
20 observations, from your recall, about his demeanor in  
21 reference to that?

22 A Yes. I think I would have to say he was a  
23 little bit more reluctant this time around, apprehensive  
24 about testifying.

25 Q Okay. Was he nonetheless cooperative?

1           A        Oh, yes, cooperative. I don't know whether  
2 it may have been frustration with the system, that sort  
3 of thing.

4           Q        All right, let me ask you this, sir. Can  
5 you testify as to whether or not Rusty Jackson, who  
6 represented John Mark Waldrip in the first trial, filed  
7 any motions following John Mark Waldrip's conviction?

8           A        Yes, he did, he filed a motion for new  
9 trial.

10          Q        Did that matter come on for hearing?

11          A        Yes.

12          Q        Was there a motion for new trial granted in  
13 that case by the trial judge who had heard the case  
14 previously?

15          A        Yes, I represented the State at that motion,  
16 the motion was granted.

17          Q        Do you recall, then, from your own personal  
18 knowledge as to the reasons the new trial was granted?

19          A        Yes, I do.

20          Q        And what was that reason?

21          A        The reason was there was improper  
22 communication by one of the bailiffs to the jurors  
23 concerning their deliberations, and that formed the  
24 basis, although I don't think that was the original  
25 ground of the motion for new trial, that came out during

1 Cumming?

2 MR. DARRAGH: Your Honor, I object at this  
3 time without proper impeachment of the witness through  
4 appropriate methods, which have not been presented by  
5 counsel.

6 THE COURT: Sustained.

7 MR. BRANNON: If we might, I need to respond  
8 to that again, Judge.

9 THE COURT: If you are asking to ask that  
10 question, I don't think it is going to do any good, but  
11 if you want to try it, you can.

12 MR. BRANNON: For purposes of discovery, we  
13 were only handed it the end of last week.

14 MR. DARRAGH: Your Honor, if this is going  
15 to be a longer discussion, if we could have it at the  
16 bench.

17 THE COURT: Approach the bench, please.

18 (Recorded bench conference).

19 THE COURT: Okay.

20 MR. BRANNON: My first response is, since he  
21 has testified that he was and where he was incarcerated,  
22 I should be allowed to ask anyway, because they have  
23 opened the door for bringing that in. But if the  
24 objection is what I'm going to impeach him with, it was  
25 only given to us last Thursday afternoon and there is no